

Message Text

LIMITED OFFICIAL USE

PAGE 01 LONDON 07739 01 OF 02 111305Z
ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00
DODE-00 DOTE-00 INR-07 NSAE-00 EPG-02 FAA-00 L-03
NSC-05 SS-15 /054 W
-----111333Z 014075 /40
R 111133Z MAY 77
FM AMEMBASSY LONDON
TO SECSTATE WASHDC 3739

LIMITED OFFICIAL USE SECTION 01 OF 02 LONDON 07739

E.O. 11652: N/A
TAGS: EAIR, UK
SUBJECT: CIVAIR: SEABOARD'S LEGAL PROBLEMS

REF: LONDON 7291; STATE 101613

1. SINCE REFTELS EXCHANGED, WE HAVE HAD OPPORTUNITY TO DISCUSS SEABOARD'S MILITARY AIRLIFT COMMAND (MAC) CHARTER FLIGHT PROBLEM WITH THE CARRIER'S SOLICITOR AND DEPT. OF TRADE. FOLLOWING INFORMATION HAS BEEN DEVELOPED.
2. WE ASKED SHOVELTON ABOUT SEABOARD'S PROBLEM AND FOUND HE WAS NOT AWARE OF THE ACTION NOR THAT IT WAS THE DEPT. OF TRADE WHICH WAS PRESSING THE CASE. HE SUGGESTED WE CONTACT IAN BROWN. BROWN TOLD US THE ISSUE HAD BEEN BROUGHT TO HIS ATTENTION LAST AUTUMN BY DOT'S CHARTER SECTION. HE TOLD THEM TO REVIEW IT WITH DOT'S LAWYERS AND, IF THERE SEEMED TO BE A CASE, TO HAVE THE LAWYERS PROCEED WITH IT. CONSIDERABLE TIME HAD ELAPSED WHILE DOT'S LEGAL SECTION OBTAINED THE NECESSARY DATA TO PROCEE AS THEY FINALLY DID IN LATE MARCH 1977 (REFTEL).
3. WHEN WE SUGGESTED IT SEEMED DOT WAS MAKING A LARGE ISSUE OF WHAT WAS ONLY A TECHNICAL VIOLATION AT MOST,

LIMITED OFFICIAL USE

PAGE 02 LONDON 07739 01 OF 02 111305Z

SINCE DOT ROUTINELY ISSUED BLANKET PERMITS FOR US MILITAR (MAC) CHARTERS, BROWN SAID HE UNDERSTOOD CONSIDERABLY BROADER OPERATIONS THAN MAC FLIGHTS WERE INVOLVED. WE POINTED OUT THAT DOT'S LETTER TO SEABOARD AND SEABOARD'S RECORDS WHICH HAD BEEN PROVIDED TO THE POLICE SHOW THAT ONLY MAC FLIGHTS WERE IN QUESTION, AND NOTED THAT, IN ANY EVENT, THERE APPEARED TO BE CLAUSES OF THE 1974 AIR NAVI-

GATION ORDER (ARTICLES 88(2) AND 88(3)) WHICH EXEMPT MILITARY AND VISITING FORCES OPERATIONS FROM THE 1974 ORDER. BROWN AGREED DOT'S INTERPRETATION OF THE 1974 ORDER MIGHT BE INCORRECT BUT NOTED DOT'S SOLICITORS THOUGHT THERE HAD BEEN A VIOLATION AND THAT THE COURT WOULD HAVE TO DECIDE THE ISSUE. IN REGARD TO THE LARGE PENALTIES WHICH COULD BE ASSESSED (REFTEL) HE SAID HE WAS CERTAIN THE QUESTION OF PRISON SENTENCES WOULD NOT EVEN BE CONSIDERED AND THAT HE HAD NO INDICATION THAT DOT INTENDED REQUESTING HEAVY FINANCIAL PENALTIES.

4. SEABOARD'S SOLICITOR PROVIDED A COPY OF THE STATEMENT HE HAS SENT TO THE PROCURATOR FISCAL'S OFFICE IN AYRSHIRE MAY 9. HIS MAJOR DEFENSE IS BASED ON ARTICLE 88(3) OF THE 1974 ORDER EXEMPTING MILITARY AIRCRAFT FROM THE PROVISIONS OF ARTICLE 79. HE REASONS THAT MAC IS AT LIBERTY TO HIRE AIRCRAFT WHICH THEN WOULD COME UNDER THE DEFINITION OF MILITARY AIRCRAFT. ARTICLE 88(2) IS ALSO CITED IN DEFENSE AS THIS EXEMPTS "VISITING FORCES" FROM THE PROVISIONS OF THE 1974 ORDER. HOWEVER, DUE TO THE DEFINITION OF "VISITING FORCES," IT IS NOT CLEAR THAT THIS PROVISION WOULD APPLY TO US MILITARY FORCES.

5. SEABOARD'S SOLICITOR TOLD US HE EXPECTS TO RECEIVE A RESPONSE TO THE STATEMENT FILED MAY 9 IN ABOUT A WEEK. ONE POSSIBILITY IS THAT IN CONSIDERATION OF SEABOARD'S ARGUMENT THE CASE COULD BE DROPPED.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 LONDON 07739 01 OF 02 111305Z

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 LONDON 07739 02 OF 02 111304Z
ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00
DODE-00 DOTE-00 INR-07 NSAE-00 EPG-02 FAA-00 L-03
NSC-05 SS-15 /054 W
-----111334Z 014039 /40
R 111133Z MAY 77

FM AMEMBASSY LONDON
TO SECSTATE WASHDC 3740

LIMITED OFFICIAL USE SECTION 02 OF 02 LONDON 07739

6. COMMENT: SEABOARD DOES NOT DISPUTE THAT THE FLIGHTS TO PRESTWICK FOR MAC ON WHICH THE UK CASE IS BASED WERE OPERATED. FROM EMBASSY RECORDS, AS WELL AS SEABOARD RECORDS, IT IS CLEAR THAT THE CARRIER HAD BEEN INFORMED BY THE DEPT. OF TRADE THAT IT REQUIRED PERMITS BE REQUESTED AND ISSUED BEFORE MAC CHARTER FLIGHTS ARE OPERATED. SEABOARD'S SOLICITOR IS BASING HIS DEFENSE ON TWO SECTION OF THE 1974 AIR NAVIGATION ORDER (ARTICLES 88(2) AND 88(3)) WHICH HE INTERPRETS EXEMPTS FLIGHTS OPERATED BY OR FOR THE MILITARY FROM THE PROVISIONS OF THE 1974 ORDER. WHILE, TO OUR KNOWLEDGE, NONE OF THE US CARRIERS HAVE PREVIOUSLY CONTESTED DOT'S AUTHORITY IN RESPECT TO MAC CHARTERS, SEABOARD'S SOLICITOR BELIEVES HE HAS DEFENSE WHICH HAS MERIT.

7. DOT'S REACTION TO OUR INQUIRY ABOUT THE CASE LEADS US TO CONCLUDE THAT A DECISION WAS NOT TAKEN ON POLICY GROUNDS TO HARASS SEABOARD. IT APPEARS MORE LIKELY THAT SINCE SEABOARD HAS, IN DOT'S VIEW, VIOLATED THE PROVISION OF ARTICLE 79 REQUIRING PERMISSION FOR CHARTER FLIGHTS, DOT HAS ALLOWED THE CASE TO BE ROUTINELY PROCESSED BY ITS LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 LONDON 07739 02 OF 02 111304Z

ATTORNEYS TO ITS LOGICAL CONCLUSION AND FINAL DECISION BY THE COURTS.

8. ACTION: AFTER DISCUSSING THE STATUS OF THE CASE WITH SEABOARD'S SOLICITOR, WE AGREE WITH HIM THAT WE SHOULD NOW AWAIT THE PROCURATOR FISCAL'S RESPONSE TO THE STATEMENT FILED BEFORE CONSIDERING ANY FURTHER ACTION. NONETHELESS, TO SUPPORT SEABOARD'S CASE IF IT REACHES COURT, WE WOULD APPRECIATE RECEIVING THE DEPARTMENT'S RESPONSE ON THE ISSUE OF APPLICABLE MILITARY AGREEMENTS (PARA (5) AND (6) REFTTEL).

SPIERS

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: COURT PROCEEDINGS, SUPPLEMENTAL AIRLINES, MILITARY AIRLIFTS
Control Number: n/a
Copy: SINGLE
Sent Date: 11-May-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977LONDON07739
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770165-1137
Format: TEL
From: LONDON
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770571/aaaacixq.tel
Line Count: 165
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: c8beba96-c288-dd11-92da-001cc4696bcc
Office: ACTION EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 LONDON 7291, 77 STATE 101613
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 14-Mar-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2571383
Secure: OPEN
Status: NATIVE
Subject: CIVAIR: SEABOARD'S LEGAL PROBLEMS
TAGS: EAIR, UK, US, SWA, SEABOARD WORLD AIRLINES
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/c8beba96-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009